

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.4538 of 1999

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Date:04.07.2007

Between:

The Forest Range Officer.

.. PETITIONER

AND

V.Kamala Kannan and another.

..RESPONDENTS

ORDER:

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The Forest Range Officer, Sanipaya Range of Kadapa District filed this writ petition challenging the order, dated 18.07.1998, passed by the Court of the District Judge, Kadapa in C.M.A.No.16 of 1997.

The facts that led to the filing of this writ petition are as under:

The petitioner and his team got an information that smuggling of red sanders was taking place in the surroundings of Veeraballi Beat and Gadikota Reserve Forest in his range and they held a watch on the intervening night of 3rd and 4th of August, 1985. At 4.00 a.m., a lorry bearing No.PYP-985 was intercepted. Ten persons, who are in the lorry, are said to have fled away under the cover of darkness. 214 red sanders weighing 5333 kgs. were found in the lorry. The lorry and red sanders were seized under the cover of a panchanama.

The first respondent, the lorry owner, filed W.P.No.9688 of 1995 claiming the relief of release of the lorry. The lorry was directed to be released, on furnishing immovable property as security for a sum of Rs.50,000/- and an undertaking to produce the vehicle as and when required. The Authorised Officer under Section 42 of the Andhra Pradesh Forest Act (for short 'the Act') passed an order, dated 19.08.1989, directing confiscation of the lorry and red sanders. Aggrieved thereby, the first respondent filed F.S.A.No.3 of 1987 before the District Court. The appeal was allowed on the ground that there is no clear finding as to whether it was a case of loading the timber when the vehicle was stationary or its having been intercepted while in motion. Through its order, dated 16.08.1988, the District Court remanded the matter to the Authorised Officer. On such remand, the Authorised Officer conducted further enquiry and held that the offence against the vehicle was clearly proved. Thereupon, the first respondent filed C.M.A.No.16 of 1997 before the learned District Judge, Kadapa. The same was allowed on the ground that the petitioner failed to prove that the first respondent had the knowledge of the offence.

The learned Government Pleader for Forests submits that all the ingredients of the forest offence have been proved against the vehicle as well as the forest produce and there was absolutely no basis for the Appellate Court to set aside the order of confiscation. He contends that the burden to prove lack of knowledge is squarely upon the first respondent and he did not make any effort in this regard. According to the learned counsel, the Appellate Court wrongly placed the burden upon the prosecution in this regard.

The matter was adjourned on four occasions to enable the

learned counsel for the first respondent to appear. There is no representation today also.

Against the order of confiscation, dated 19.08.1986, passed by the Authorised Officer, the first respondent filed an appeal before the District Court. The appeal was allowed on the sole ground that the order of confiscation was not clear as to whether the forest produce was being loaded in a stationary lorry or whether the lorry was intercepted while it was in motion. After the remand, the Authorised Officer recorded further evidence and held that the lorry was intercepted while in motion and directed confiscation thereof. Once again, an appeal was filed before the learned District Judge by the first respondent. The learned District Judge agreed with the finding of the Authorised Officer that the lorry was intercepted while in motion, and thereby, an offence under the Act was committed. However, the learned District Judge had set aside the order of confiscation on a different ground, namely that the knowledge of the first respondent about the offence was not proved.

It is open to the owner of a vehicle or receptacle used in a forest offence to prove that the offence took place without his knowledge and despite his due care and caution. If such facts are proved, the vehicle or receptacle cannot be subjected to confiscation. One important aspect of the matter, however, is that the burden to plead and prove absence of knowledge of the offence squarely rests upon the owner of such vehicle or receptacle. It is no part of the duty, much less the obligation of the Forest Department, to prove that the owner had the knowledge of the offence. It is apt to extract sub-Section 2-C of Section 44 of the Act, which is relevant, in the context:

“(2-C) Without prejudice to the provisions of sub-section (2-B), no order of confiscation under sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use. “

I n Sub-Divisional Forest Officer, Chennur Vs Vijay

B.Gulati^[1], a Full Bench of this Court held that if the owner of a vehicle proves his innocence, his vehicle cannot be confiscated. The record in this case does not disclose that the first respondent has taken any steps or adduced any evidence to prove his innocence. The learned District Judge proceeded on the assumptions that it is the duty of the Forest Department to prove that the first respondent had the knowledge of the said offence. The relevant part of the judgment reads as under:

“The evidence of P.W.1 and P.W.2 also did not show that the lorry was being used at any earlier point of times for transportation of forest produce without permit committing offence under Forest Laws. Nor is there any evidence produced by the forest officials to show that the owner of this lorry has been indulged in transportation of any forest produce in his vehicle. Nor is there any evidence to show that there was direct instruction by the owner of the lorry to the driver to use the lorry in transporting the forest produce only. There is also no evidence to show that the driver of the lorry has been remitting the hire charges to the owner for transportation of the forest produce. Therefore, there is no evidence on record to show that indirectly also the owner of the lorry has knowledge of the transportation of the forest produce red sanders in his lorry indulged by the driver of his lorry”

There is no whisper about any evidence that is attributable to the first respondent. Being the owner of the vehicle, the first respondent is presumed to be aware of any activity undertaken

through the vehicle. If the vehicle was put to use other than what he directed and without his knowledge, it was for him to plead and prove the necessary facts. The Appellate Court had misapplied the principle laid down by the Full Bench of this Court.

For the foregoing reasons, the writ petition is allowed and the order, dated 18.07.1998, passed in C.M.A.No.16 of 1997 is set aside. There shall be no order as to costs.

03.07.2007

Note: L.R.Copy to be marked.
(B/o)

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[\[1\]](#) 1997(6) ALT 238 (F.B.)